

**BEFORE THE  
CASE REVIEW PANEL**

|  |   |                           |
|--|---|---------------------------|
| In The Matter of Ramon Diaz Rios,              | ) |                           |
| Petitioner                                     | ) |                           |
| and  | ) | <b>CAUSE NO. 001218-7</b> |
| The Indiana High School Athletic Assoc., Inc., | ) |                           |
| Respondent                                     | ) |                           |
|  | ) |                           |
| Review Conducted Pursuant to                   | ) |                           |
| I.C. 20-5-63 <i>et seq.</i>                    | ) |                           |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

Petitioner is a 17-year-old senior (d/o/b July 22, 1983) enrolled in Wabash High School within the Wabash City Schools. Wabash is a member school of the Indiana High School Athletic Association, Inc., the Respondent herein. Petitioner is a native of Puerto Rico, where his family continues to reside. He attended school in Puerto Rico through the eleventh grade. He is both an exceptional student academically and athletically, especially in basketball and volleyball.<sup>1</sup> His primary language is Spanish. He hopes to attend Purdue University and major in engineering. His prospects for doing so would be enhanced if his English conversational skills improved. In addition, he may be able to qualify for financial aid if he resided in the Indiana prior to enrollment in a post-secondary institution here.

Petitioner's faith tradition is Roman Catholicism. With the assistance of his local church, efforts were made to locate a small high school with small class sizes that would be located near Purdue University but in a community where there is a Catholic presence. In August of 2000, through the assistance of

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<sup>1</sup>Although many of the member schools of the IHSAA maintain volleyball teams for its male students and engage in interscholastic competition, this sport is not presently sanctioned by the IHSAA, which sanctions only girls' volleyball. As a consequence, Petitioner's eligibility status for basketball is the sole issue in this matter.

St. Bernard Catholic Church in Wabash, Petitioner enrolled in Wabash High School. On October 18, 2000, the IHSAA Athletic Transfer Report was submitted through Wabash High School to the Respondent. Respondent, on October 27, 2000, determined that Petitioner did not meet the criteria for “full eligibility” and, instead, accorded him only “limited eligibility” under Rule C-19-6.2, which would restrict him to junior varsity participation in basketball.<sup>2</sup>

Petitioner, through Wabash High School, requested on November 10, 2000, an appeal of this determination to the Respondent’s Review Committee. The Review Committee conducted a hearing on December 11, 2000, and issued its written decision on December 14, 2000, upholding the original determination that Petitioner should be accorded only “limited eligibility” because his transfer from Puerto Rico to Wabash High School was not accompanied by a corresponding change of residence by his parents, and the Petitioner did not demonstrate that his situation warranted application of the “Hardship Rule.”<sup>3</sup>

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<sup>2</sup>The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys; “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” Rule 19, which governs transfers and eligibility, is common to all athletes. **Rule C-19-6** addresses transfer eligibility where there has been no corresponding change of residence. “Limited eligibility” is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. The “limited eligibility” rule can be applied to situations where, as here, there has been no corresponding change of residence. See **Rule C-19-6.2**. All references herein are to the IHSAA’s By-Laws for the 2000-2001 school year.

<sup>3</sup>**Rule C-17-8** is the IHSAA’s “Hardship Rule.” Generally, the “Hardship Rule” allows the IHSAA “to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” **Rule C-17-8.1**.

The IHSAA, on its own initiative, can invoke the “Hardship Rule,” but a member school cannot. **Rule C-17-8.2**. The IHSAA provides some guidance and examples as to what would be considered a “hardship.” See **Rule C-17-8.4** (e.g., injury, illness or accidents that result in a student being unable to meet a basic requirement; substantial changes in the financial condition of the student or his family, although these would have to be permanent and “significantly beyond the control of the student or the student’s family”) and **Rule C-17-8.5**, which applies directly to **Rule 19** (the “Transfer Rule”), specifically **Rule C-19-6**, which allows the IHSAA to grant full eligibility where (a) the student establishes “the transfer is in the best interest of the student and there are no athletic related motives

The Review Committee noted that Petitioner's parents remained in Puerto Rico. It is not disputed that his parents did not change their residence. Under **Rule C-19-18.1**, both the receiving school and the sending school must complete the IHSAA Athletic Transfer Report. Wabash High School did so, indicating that the reason for the transfer was related to academics. However, the Petitioner's former school indicated that the reason for the transfer did involve athletics, although this was later clarified by the Puerto Rican school as a misunderstanding of the question on the form. The sending school corrected its position, and represented that the move was for academic reasons related to enhancement of post-secondary opportunities. Petitioner wished to improve his proficiency in the use of the English language.

The Catholic Church in Wabash has been involved in the placement of students from Puerto Rico in the past. Petitioner originally resided with a deacon until he was placed with a family. The Wabash Circuit Court, on October 19, 2000, appointed the mother and father of the family as the legal guardians for the Petitioner.

Petitioner, although previously an honor student, has struggled academically at Wabash High School due to the language barrier, but he has demonstrated steady improvement. His guardians report that he studies at every available opportunity.

The aggravating circumstance in this matter appears to be the involvement of Giddel Padilla, who approached Petitioner in either May or June of 2000 after a high school basketball game about attending school in the United States. Petitioner did not know who Mr. Padilla was or what his occupation might be. Mr. Padilla assisted Petitioner and his family in his transfer to Wabash High School.<sup>4</sup>

The Respondent concluded from the above that there was proof "that athletics and possibly undue influence were involved in the transfer," but found that the evidence was "insufficient or inconclusive of a transfer" that was driven "primarily [for] athletic reasons." Accordingly, there were no violations of **Rule C-19-4** (Transfers For Primarily Athletic Reasons) or **Rule 20** (Undue Influence).

However, because there was no corresponding change of residence by Petitioner's parents—but in consideration of the lack of evidence of undue influence or transfer primarily for athletic reasons—the

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surrounding the transfer," and (b) the principals of the sending and receiving schools affirm in writing that the transfer is in the best interests of the student and there are no athletic-related motives.

<sup>4</sup>**Rule C-20-1** prohibits, in relevant part, "[t]he use of undue influence by any person...to secure...a student, or to secure...one or both of the parents or guardians of a student as residents" to attend a particular school. A student who attends a school through the "undue influence" of another may be found ineligible for interscholastic competition for 365 days and may jeopardize the standing of the high school with the IHSAA.

Respondent found him eligible for “limited eligibility.”<sup>5</sup> Respondent also found that Petitioner failed to establish sufficient grounds for the application of the “Hardship Rule.” In pertinent part, the Respondent concluded:

One of the primary purposes of the transfer rule is to serve as a deterrent to athletically motivated transfers, and here there is some suggestion that the transfer may be athletic. In addition, granting an exception to the transfer rule (i) could cause the displacement of an existing bona fide student from participating on the Wabash basketball team; (ii) will be at odds with the fair, equitable and uniform standards under which Indiana interscholastic athletic competition takes place; (iii) will suggest that interscholastic athletic participation, and not academics, may assume a dominant position in a student’s attendance at school; (iv) [Petitioner’s] varsity participation may send a signal to other students who, to obtain full eligibility, would given an acceptable, valid reason for a transfer as [a] subterfuge for an improper athletically motivated one; (v) enforcement of the rule will serve as a detriment to others who might otherwise improperly recruit; and (vi) enforcement of the rule will serve to protect the school program [in Puerto Rico] which is losing a student who has established an identity as student and athlete and contributes to the overall school program and image. [Petitioner] has failed to show that strict enforcement of the transfer rule will not accomplish at least one goal of the rule.

Conclusion No. 5.<sup>6</sup> Respondent also found that Petitioner has experienced some hardship due to the transfer, but the hardship does not rise to the level of “undue hardship” such that the “Hardship Rule,” **Rule C-17-8**, should be invoked.

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<sup>5</sup>**Rule C-19-6.1**, which the Respondent found did not apply, permits a student who transfers without a corresponding change of residence to be immediately eligible provided that one of thirteen different scenarios are sufficiently proven. These thirteen scenarios include “[t]he transfer is a result of the student being a ward of a court.” The IHSAA does not define what “ward of the court” means. There are no findings or conclusions that indicate the guardianship order issued by the Wabash Circuit Court is to be distinguished from the operational definition for “ward of the court.” For the purpose of this decision, the Respondent did not equate the guardianship with the operational definition of “ward of the court.”

<sup>6</sup>This Conclusion creates concern for several reasons: Although previously Respondent had concluded that there was no showing of undue influence or that the transfer was primarily for athletic reasons, this Conclusion is based upon conjecture that such activities probably occurred. In addition, the criteria included in this Conclusion are, essentially, the philosophical underpinnings of **Rule 19**, the Transfer Rule. The Petitioner does not bear any burden of proof regarding the stated Philosophy. If there would be any burden of proof for statements of philosophy, it would be the Respondent, who drafted them, and not the Petitioner, who would be unaware of them.

Accordingly, the Review Committee upheld the original determination that Petitioner should have “limited eligibility” and not general or full eligibility.

### **APPEAL TO THE CASE REVIEW PANEL**

The Petitioner, on December 18, 2000, appealed to the Case Review Panel (CRP) the adverse decision of the IHSAA Review Committee. All parties were notified of their hearing rights. Petitioner requested that the hearing be open to the public. A review hearing date was established for December 21, 2000, beginning at 1:00 p.m. local time. Notice of the review hearing was posted, as required of public agencies by Indiana’s Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. Petitioner appeared in person and by his counsel; Respondent appeared by counsel and its Commissioner. At a pre-hearing conference conducted prior to the review hearing, Petitioner submitted two documents: an affidavit from Carlos Ramos and an affidavit from Giddel Padilla. Respondent objected to the hearsay nature of the documents, which was noted for the record. A testimonial statement by Petitioner’s father was provided by videotape with no objections from Respondent.

The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a student, parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.

### **FINDINGS OF FACT**

1. Petitioner is seventeen years old (d/o/b July 22, 1983). He is a native of Puerto Rico, which presently has a commonwealth status with the United States.<sup>7</sup> He is presently 6'8" tall. In Puerto Rico, he was an excellent student and talented basketball player. Although English is taught in Puerto Rico, the instruction does not prepare one for conversational English. Petitioner would like to be bi-lingual and attend college in the United States. This would enhance future employment opportunities. Petitioner especially is interested in Purdue University.
2. In May or June of 2000, following a high school basketball game, Petitioner was approached by Giddel Padilla, a 27-year-old graduate of an American university who, according to his

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<sup>7</sup>The commonwealth status of Puerto Rico prevents Petitioner from being considered under the foreign exchange student by-laws. Puerto Rico, for application of Respondent’s by-laws, is considered on the same basis as any state.

affidavit, struggled with the language barrier and cultural differences. Padilla did not know Petitioner or his family before he approached them, but he did assist in the relocation of Petitioner into a small high school where there was an active Roman Catholic presence, the latter being the faith tradition of Petitioner.

3. Petitioner maintains that at no time during the conversations he and his family had with Padilla was basketball discussed.<sup>8</sup> With some assistance from Padilla, Petitioner enrolled at Wabash High School. He and his father flew to Indiana at or about August 26, 2000. For a time he and his father lived with a deacon of the local Catholic parish. Eventually, he moved in with a family where the mother was originally from Puerto Rico. The father returned to Puerto Rico. Petitioner continues to live with the family. The family obtained guardianship over Petitioner from the county circuit court. Petitioner's family pays \$150.00 a month to the family in Wabash to assist with Petitioner's support. Petitioner is playing on the junior varsity basketball team at Wabash High School as a result of Respondent's declaring him to have "limited eligibility."
4. Wabash High School submitted the Athletic Transfer Report on the form provided by the Respondent. Petitioner's former school in Puerto Rico also completed the form. There was some uncertainty expressed by both schools as to the nature of some of the information requested on the form. However, subsequent testimony before Respondent's Review Committee and before the Case Review Panel indicates that it was the intent of the principals of both schools to indicate that the transfer was not primarily for athletic reasons and was related to academics.
5. Petitioner has struggled to learn conversational English. His grades have suffered because of the language barrier, but he continues to work hard. Testimony indicates that Petitioner studies at every opportunity. Petitioner recently took part in the administration of the Scholastic Aptitude Test (SAT). He did so in English and without accommodations for language barriers. His test scores were disappointing. He plans to retake the SAT.
6. Petitioner articulated the academically related motives for his transfer. Although he was an honor roll student at his school in Puerto Rico and a starting center on the basketball team,

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<sup>8</sup>Although Petitioner's testimony to this effect is received somewhat skeptically, especially in light of the circumstances involving the initial meeting (a high school basketball game), the Respondent's representations of contrived conspiracy were utterly without foundation. This testimony attempted to implicate the American university Mr. Padilla attended, an assistant coach who may have been there at that time, and more coincidences that eventually were intended to implicate the basketball coach at Wabash High School in a recruitment scheme. Petitioner's testimony may have stretched credulity, but Respondent's relation of the conspiratorial theory impugned the character and dignity of others. Petitioner timely objected to Respondent's testimony, which was sustained.

educational opportunities would be limited if he remained in Puerto Rico. He was not fluent in English and his father had been retired on disability related to his previous military service. The families' income had been reduced by more than 50 percent.<sup>9</sup> Petitioner believes that if he can establish residency in the United States, there will be available more financial aid than would be available should he remain in Puerto Rico. In addition, the more conversant he is in English, the better his chances to succeed in post-secondary education and beyond.

7. There is no indication that Petitioner received any inducements to attend Wabash High School, nor is there any evidence that his transfer to Wabash High School was the result of any undue influence.
8. Although Petitioner has transferred to Wabash High School, his family has not had a corresponding change of residence. There is no evidence to suggest that Petitioner would be prohibited in any way in returning to his school in Puerto Rico, should he wish to do so.

#### CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 to the Indiana Code. The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Petitioners. The parent has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Petitioner transferred to Wabash High School without a corresponding change of residence by Petitioner's parents, as contemplated by the Respondent's by-laws. In order to have immediate full eligibility under these by-laws where there is no corresponding change of residence by the parents, Respondent offers thirteen (13) exceptions under **Rule C-19-6.1**. Petitioner does not meet any of the thirteen (13) exceptions. The closest one is "ward of the court." However, although this term is not defined in Respondent's by-laws and is often used

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<sup>9</sup>Although there is some discrepancy in what the family income is, it is apparent that the family income when the mother's income is combined with the father's disability places the family income at about \$35,000 a year.

interchangeably with “ward of the state,” the phrase “ward of the court” is not typically applied to the type of guardianship issued by the county circuit court.

3. Although Respondent noted that Petitioner did not allege a hardship early on, the Case Review Panel does not find that a Petitioner student-athlete has to plead necessarily a hardship for this to be taken into consideration. Respondent’s by-laws indicate that Respondent can make a determination of hardship on its own accord under circumstances similar to the instant matter. To the extent Respondent may be asserting Petitioner waived a hardship determination, the Case Review Panel finds that the issue was timely raised.
4. Respondent’s by-laws for its “Hardship Rule” indicate that the effect of any rule (with exceptions), including the Transfer Rule (in this case, **C-19-6**), may be set aside when the affected party establishes “to the reasonable satisfaction” of the Respondent that strict enforcement of the rule will not serve to accomplish the purpose of the rule; the spirit of the rule has not been violated; and there exists in a particular case circumstances showing an undue hardship that would result from enforcement of the rule. **Rule C-17-8.1** Ordinary hardship situations are not considerations. The circumstances surround the alleged hardship must “be beyond the control of the school, the coach, the student, the parents and/or the affected party.” **Rule C-17-8.4.** A “change in financial condition of the student or the student’s family may be considered a hardship; however, such conditions or changes in conditions must be permanent or substantial and significantly beyond the control of the student or the student’s family.” *Id.* The language “to the reasonable satisfaction” indicates that judgment must be exercised. In this case, Respondent has determined that Petitioner’s circumstances do not rise to the level of “undue hardship.” The student chose to transfer to an Indiana school and was not required to do so by any circumstances beyond his control. Although the articulated reasons for doing so are admirable and have resulted in a hardship, the decision to transfer was wholly within Petitioner’s control as well as his family. The circumstances do not constitute an “undue hardship” such that the Respondent’s “Hardship Rule” should be invoked.
5. Additionally, Petitioner alleges an “economic hardship.” However, the changes in financial circumstances must be “permanent or substantial.” Accepting the testimony and evidence, the family has experienced a reduction in overall family income. However, family income is still at about \$35,000 a year. The father’s military-related disability is certainly permanent, the family income reduction is not substantial and may not be permanent. Petitioner has not satisfactorily proven the existence of an “economic hardship.”



## ORDERS

1. Respondent's determination that Petitioner have "limited eligibility" under **Rule C-19-6.2** because he transferred schools without a corresponding change of residence by his parents is upheld. The vote by the Case Review Panel was 8-0.

DATE: December 28, 2000

/s/ John L. Earnest, Chair  
Case Review Panel

## APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

